

IN THE SUPREME COURT OF THE UNITED STATES

NO. 83-1796 (5)

STATE OF ALABAMA,

Petitioner,

v.

LEWIS L. GANNAWAY,

Respondent.

BRIEF OF RESPONDENT IN OPPOSITION
TO PETITION FOR WRIT OF CERTIORARI

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OPINIONS BELOW

1. The opinion of the Court of Criminal Appeals of Alabama affirming the trial court is reported as follows:

Gannaway v. State, 448 So.2d
409 (Ala. Cr. App. 1983).

2. The opinion of the Supreme Court of Alabama reversing the decision of the Court of Criminal Appeals of Alabama is reported as follows:

Ex Parte Lewis L. Gannaway
(Re: Lewis L. Gannaway v.
State of Alabama), 448 So.2d
413 (Ala. 1984).

3. The order of the Court of Criminal Appeals of Alabama conforming its decision to that of the Supreme Court of Alabama is reported as follows:

Gannaway v. State, 448 So.2d
416 (Ala. Cr. App. 1984).

JURISDICTION

Petitioner asserts only that jurisdiction is invoked pursuant to 28 U.S.C. § 1257. Because the Alabama Supreme Court's holding was based upon adequate, non-federal grounds, jurisdiction is not proper under 28 U.S.C. § 1257, as will be explained.

QUESTIONS PRESENTED FOR REVIEW

1. Whether this Court should grant certiorari to review a decision based on state law, independent of federal grounds?

2. Whether this Court should depart from its long-standing practice of refusing to grant certiorari to review pure questions of fact decided below, in the

absence of exceptional circumstances?

3. Should this Court grant certiorari to compare the holding herein with that of United States v. Caceres, 440 U.S. 741 (1979), when Caceres addresses an issue totally unrelated to that decided by the Alabama Supreme Court?

4. Should this Court grant certiorari when no important or novel fourth amendment issues have been presented by the State's petition?

5. Should this Court grant certiorari to compare the holding herein to that of Segura v. United States, ____ U.S. ____, 104 S.Ct. 3380 (1984), the holding of which is not applicable to this case?

CONSTITUTIONAL PROVISIONS INVOLVED

1. The Fourth Amendment to the Constitution of the United States, which reads as follows:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

2. Section One of the Fourteenth Amendment to the Constitution of the United States, which reads as follows:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the state wherein they reside.

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

STATUTORY PROVISIONS INVOLVED

The Alabama Supreme Court held that the officers failed to comply with the requirements of Ala. Code § 15-5-9 (1975), and that, accordingly, the trial court erred by overruling the motion to suppress the evidence seized during the search in question.

Ala. Code § 15-5-9 (1975), provides as follows:

To execute a search

warrant, an officer may break open any door or window of a house, any part of a house or anything therein if after notice of his authority and purpose he is refused admittance.

ARGUMENT

I. THE STATE'S PETITION
SEEKS REVIEW OF A PURELY
FACTUAL QUESTION DECIDED
PURSUANT TO STATE LAW BY
THE ALABAMA SUPREME COURT.

The Alabama Supreme Court granted certiorari only "to ascertain whether the Court of Criminal Appeals has properly applied the provisions of Code of 1975, § 15-5-9, and [their] decision in Daniels v. State, 391 So.2d 1021 (Ala. 1980), to the facts of this case." Ex parte Gannaway, 448 So.2d 413, 414 (Ala. 1984). That Court

held that the police officers failed either to knock or announce prior to their entry into Gannaway's home to execute a search warrant, and that they made no attempt to comply with the statute. The Court also held that the evidence disclosed no facts which supported or justified their unannounced entry. Id.

This Court "customarily accept[s] the factual findings of state courts in the absence of 'exceptional circumstances.' "

California Retail Liquor Dealers Association v. Midcal Aluminum, Inc., 445 U.S. 97, 111-12 (1980) (citations omitted). The decision of the Alabama Supreme Court to suppress the evidence was based on its view that as a matter of fact the executing officers violated, without

justification, the Alabama "knock and announce" statute, Ala. Code § 15-5-9 (1975), and its previous opinion in Daniels v. State, 391 So.2d 1021 (Ala. 1980), rather than the Fourth Amendment. The decision to exclude evidence obtained in violation of state law thus rested on adequate and independent state grounds and certiorari should be denied. Herb v. Pitcairn, 324 U.S. 117 (1945).

II. UNITED STATES V. CACERES,
440 U.S. 741 (1979) IS
TOTALLY UNRELATED TO THE
ISSUE DECIDED BY THE
ALABAMA SUPREME COURT
BELOW.

In United States v. Caceres, 440 U.S. 741 (1979), this Court held that the Fourth Amendment's exclusionary rule afforded no

protection against violations of Internal Revenue Service administrative regulations because the Repondent enjoyed no right of privacy under either the United States Constitution or federal law. This Court said that tape recordings obtained when an I.R.S. agent monitored his face to face conversations with the Respondent need not be suppressed under the Fourth Amendment. The Alabama Supreme Court did not hold, as the State insists, that any violation of Alabama's "knock and announce" statute was, ipso facto, a violation of the Fourth Amendment. Instead, the Court below held only that the officers' failure to comply with that statute could not be judged by a standard which would be reasonable or acceptable for business or social visitors,

but rather that it must be judged according to the facts and circumstances known to the officers at the time of their attempt to execute the search warrant. As the previous argument points out, the decision of the Alabama Supreme Court was based upon the application of state law to its factfindings. Thus, we perceive no basis for the State's assertion that Caceres conflicts in any way with the decision below, and certiorari should be denied.

III. NO IMPORTANT OR NOVEL FOURTH
AMENDMENT QUESTION IS PRE-
SENTED BY THE DECISION OF
THE ALABAMA SUPREME COURT.

While it is axiomatic that evidence obtained in violation of the Fourth Amendment is not admissible in state

proceedings, the decision of the Alabama Supreme Court below that the evidence seized should have been suppressed was not based on the Fourth Amendment, but upon its finding that the facts and circumstances known to the officers at the time they attempted execution of the search warrant did not justify their failure to comply with the "knock and announce" statute.

Daniels v. State, 391 So.2d 1021 (Ala. 1980), cited by the Alabama Supreme Court in the instant case, "recognize[d] that fundamental constitutional principles for privacy of the home foreclose[d] any 'grudging application' of our State statute." 391 So.2d at 1023. But neither Daniels nor the instant case held that a violation of the statute was a violation of

the Fourth Amendment, contrary to Petitioner's assertions. Clearly, Mapp v. Ohio, 367 U.S. 643 (1961), did not "obliterate" . . . state laws relating to arrests and searches in favor of federal law," so long as constitutional rights are not abridged thereby. Ker v. California, 374 U.S. 23, 31 (1963). Alabama's decision to suppress evidence because it was seized in violation of its "knock and announce" statute did not violate Gannaway's rights under the Fourth Amendment; thus, no issue has been presented as to the scope and effect of this Court's previous rulings under the Fourth Amendment and certiorari should be denied.

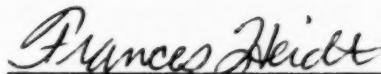
IV. THE OPINION BELOW IS NOT
INCONSISTENT WITH SEGURA V.
UNITED STATES, U.S. _____,
104 S.Ct. 3380 (1984).

In a supplement to the original petition, the State argues that the opinion below conflicts with this Court's intervening decision in Segura v. United States, _____ U.S. _____, 104 S.Ct 3380 (1984), because Segura declared admissible evidence seized pursuant to a valid warrant even though police officers had effected an illegal entry into the apartment one day prior to the execution of the search warrant. No conflict exists because Segura, decided pursuant to the Fourth Amendment, did not address the admissibility of evidence obtained pursuant to a search warrant executed in violation

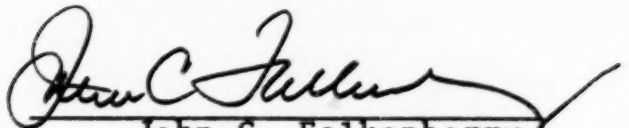
of state law. As the Court's decision below was based upon a violation of state law, no conflict with Segura exists, and certiorari on this issue should be denied.

CONCLUSION

For all of the foregoing reasons, Respondent urges this Court to deny the Petition for Certiorari.



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CERTIFICATE OF SERVICE

I, John C. Falkenberry, a member of the Bar of the Supreme Court of the United States and one of the Attorneys for the Respondent, do hereby certify that on this 12th day of December, 1984, I did serve the requisite number of copies of the foregoing on the Attorneys for the State of Alabama, Petitioner, by mailing same to them, first class postage prepaid and addressed as follows:

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